

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION

OPIATE LITIGATION

This document relates to:

Track Three Cases

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

DECLARATION OF JEFF GADDY IN SUPPORT OF PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANTS HBC SERVICE COMPANY AND GIANT EAGLE, INC.'S
MOTION FOR SUMMARY JUDGMENT, AND, ALTERNATIVELY, PLAINTIFFS'
SHOWING PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 56(D)

Pursuant to 28 U.S.C. § 1746, I, Jeff Gaddy, hereby declare as follows:

1. I am a partner at the law firm of Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr, & Mougey P.A. ("LPR"). LPR is represented on the PEC and has led discovery efforts against Defendants Giant Eagle, Inc. ("Giant Eagle") and HBC Service Company. I am one of the LPR lawyers working on the opioid case and make this declaration based on my work relating to discovery into Giant Eagle.

2. In these Track 3 cases, Plaintiffs have diligently pursued the production of notes field discovery in the face of opposition from Pharmacy Defendants, including Giant Eagle. This evidence is directly relevant to the issue of whether Pharmacy Defendants were conducting sufficient due diligence on red flag prescriptions.

3. On March 4, 2021 Plaintiffs submitted its CT3 – Motion to Compel Production of "Notes" Data Fields to Special Master Cohen. Pharmacy Defendants, including Giant Eagle opposed the Motion.

4. On May 2, 2021 Special Master Cohen ordered Pharmacy Defendants, including Giant Eagle, to produce the notes field data that was associated with 250 of Plaintiffs' Red Flag

Prescriptions per year, chosen randomly.

5. On May 6, 2021 Pharmacy Defendants, including Giant Eagle, sought reconsideration of Special Master Cohen's May 2, 2021 Order.

6. On May 10, 2021 Judge Polster entered an Amended Order Regarding Red Flagged Prescriptions and Associated Notes Fields and Data ordering the Pharmacy Defendants, including Giant Eagle, to produce the notes field data for 200 prescriptions per Pharmacy Defendant per year from 2010-2019, selected randomly. Dkt. #3726.

7. Giant Eagle made its first production of material in response to Dkt. #3726 on July 9, 2021. The production consisted of 172 documents.

8. Giant Eagle made its second production of material in response to Dkt. #3726 on August 4, 2021. The production consisted of 547 documents.

9. Giant Eagle made its third production of material in response to Dkt. #3726 on August 13, 2021. The production consisted of 832 documents.

10. On July 28, 2021 Plaintiffs asked Giant Eagle to provide a status update on Giant Eagle's notes production and when Plaintiffs could expect it to be completed.

11. On July 30, 2021 Plaintiff supplemented its request for a status update from Giant Eagle by asking when Giant Eagle would produce data that would allow Plaintiffs to link Giant Eagle's production of notes and due diligence data to specific red flag prescriptions.

12. Josh Korbin, counsel for Giant Eagle responded on August 5, 2021. As to the timing of completing production, Mr. Korbin stated Giant Eagle is "aiming to complete the production this month or in early September." As to providing the ability for Plaintiffs to link notes or due diligence data to specific prescriptions, Mr. Korbin stated "[w]e are looking into ensuring that our data productions can be linked to each randomly selected prescription (the

“Prescriptions”) and expect that we will be providing such information. We are also endeavoring to provide some type of overlay to connect hard copy prescriptions to Prescriptions.”

13. To date, Giant Eagle has not provided any further update regarding the completion of its notes field production or providing the Plaintiffs with the ability to link its notes field production with specific red flagged prescriptions.

14. Plaintiffs’ experts’ ability to analyze Giant Eagle’s notes field production is hindered due to the production being incomplete and the produced materials not being linked to any particular red flagged prescription.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 18, 2021.

/s/ Jeff Gaddy
Jeff Gaddy